

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CIVIL ACTION NO. 4:09-CV-3-BR

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 SEPTEMBER 28, 2009, AT THE LAW OFFICES OF WHEATLY, WHEATLY,
 WEEKS & LUPTON, P.A., 710 CEDAR STREET, BEAUFORT, NORTH
 CAROLINA

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1 PREVIOUS, IN JANUARY OF 2004, I BEGAN EMPLOYMENT WITH BOATS
2 UNLIMITED IN NEW BERN, NORTH CAROLINA.

3 Q. BOATS UNLIMITED, IS THAT A DIVISION OF TRIAD
4 MARINE?

5 A. IT IS. THE COMPANY IS CALLED TRIAD MARINE, IN
6 GREENSBORO, BOATS UNLIMITED IS THE NAME OF THE STORE IN NEW
7 BERN.

8 Q. YOU STARTED WORKING WITH THEM UPON GRADUATION
9 FROM CAROLINA?

10 A. YES, SIR.

11 Q. THE DATE THAT YOU STARTED WORKING?

12 A. IT WAS IN THE FIRST WEEK OF JANUARY OF 2004, I
13 CAN'T RECALL THE EXACT DATE.

14 Q. THAT'S CLOSE ENOUGH. WHAT WERE YOUR DUTIES WITH
15 YOUR EMPLOYMENT AT BOATS UNLIMITED?

16 A. MY DUTY WAS AS A SALES REPRESENTATIVE FOR THE
17 COMPANY.

18 Q. WHO MANAGED THE BOATS UNLIMITED IN NEW BERN?

19 A. HIS NAME IS CHRIS POPE.

20 Q. HOW MANY SALES REPRESENTATIVES WERE THERE IN
21 2004 WHEN YOU STARTED WORKING THERE?

22 A. IN 2004, IT WAS JUST THE TWO OF US. CHRIS AS
23 THE GENERAL MANAGER AND ME AS HIS SALES REPRESENTATIVE.

24 Q. HOW LONG DID YOU WORK AT BOATS UNLIMITED?

25 A. UNTIL APRIL OF 2006.

1 Q. DO YOU HOLD, OR HAVE YOU EVER HELD AN OPERATOR'S
2 LICENSE, OR A MASTER'S LICENSE ISSUED BY THE UNITED STATES
3 COAST GUARD?

4 A. YES, SIR.

5 Q. WHAT LICENSE DID YOU HOLD, IF ANY, ON MARCH 21,
6 2006?

7 A. AT THAT TIME I HAD A CAPTAIN'S O.U.P.V., SIX-
8 PACK LICENSE.

9 Q. THAT WAS OPERATOR UNINSPECTED PASSENGER VESSEL?

10 A. THAT'S CORRECT.

11 Q. THAT ALLOWED YOU TO OPERATE AN UNINSPECTED
12 VESSEL CARRYING SIX OR FEWER PASSENGERS FOR HIRE?

13 A. YES, SIR.

14 Q. WHEN DID YOU FIRST ACQUIRE THAT LICENSE?

15 A. I DON'T HAVE THE EXACT DATE ON MY LICENSE,
16 BECAUSE I NOW HAVE THE UPGRADED MASTER'S LICENSE, BUT I
17 BELIEVE IT WAS EARLY 2006.

18 Q. EARLY 2006, WHICH WOULD BE . . .

19 A. BEFORE THE TIME . . .

20 Q. . . . JANUARY, FEBRUARY, OR MARCH OF 2006?

21 A. YES, SIR.

22 Q. WAS THAT YOUR FIRST LICENSE?

23 A. YES, SIR.

24 Q. YOU SAY IT HAS NOW BEEN UPGRADED?

25 A. YES, SIR.

1 Q. HOW DID YOU COME ABOUT BEING EMPLOYED BY BOATS
2 UNLIMITED?

3 A. I HAVE A FAMILY RELATIONSHIP WITH THE POPES. WE
4 HAVE - BOTH CHRIS AND HIS OLDER BROTHER, BILLY, WHO IS THE
5 MANAGER OF THE GREENSBORO STORE, HAD SPENT CONSIDERABLE TIME
6 AT CAMP SEAGULL. MY BROTHER AND I HAD BOTH SPENT
7 CONSIDERABLE TIME THERE AND SO KNEW EACH OTHER AND WERE GOOD
8 FRIENDS, LEADING UP TO MY EMPLOYMENT AT BOATS UNLIMITED.

9 Q. THERE'S NO BLOOD RELATIONSHIP, JUST A FRIENDSHIP
10 OVER A PERIOD OF YEARS?

11 A. THAT'S CORRECT.

12 Q. WHAT WERE YOUR JOB DUTIES AT BOATS UNLIMITED?

13 A. MY JOB WAS PRIMARILY A SALESMAN, I ALSO WAS IN
14 CHARGE OF WARRANTY CLAIMS.

15 Q. WHAT DID YOU DO AS A SALESMAN?

16 A. CAN YOU SPECIFY YOUR QUESTION?

17 Q. YOU WOULD MEET CUSTOMERS THAT CAME TO THE
18 FACILITIES, CORRECT?

19 A. YES, SIR.

20 Q. WOULD YOU TAKE CUSTOMERS ON DEMONSTRATION RIDES?

21 A. YES, SIR.

22 Q. HOW LONG HAD YOU BEEN TAKING CUSTOMERS ON
23 DEMONSTRATION RIDES?

24 A. SINCE THE BEGINNING OF MY EMPLOYMENT?

25 Q. YES?

1 A. EITHER TO SHACKLEFORD, OR CAPE LOOKOUT.

2 Q. WHEN YOU WOULD GO TO CAPE LOOKOUT, WHAT ROUTE

3 WOULD YOU TAKE?

4 A. NORMALLY THE OUTSIDE ROUTE, BUT CERTAINLY CAN GO

5 INSIDE IF THE WEATHER WAS NOT APPROPRIATE TO LEAVE THE INLET.

6 Q. YOU DON'T HAVE ANY IDEA OF THE NUMBER OF

7 OCCASIONS THAT YOU HAD OPERATED IT IN THE AREA?

8 A. IT WOULD BE TOUGH TO SAY, YES, SIR.

9 Q. WHEN DID YOU FIRST MEET BEN HINES?

10 A. I MET MISTER HINES THE DAY BEFORE OUR DEMO RIDE,

11 WHICH WOULD BE MARCH 20TH, 2006.

12 Q. WHERE DID YOU MEET HIM?

13 A. AT BOATS UNLIMITED IN NEW BERN.

14 Q. DID HE STOP IN AS A POTENTIAL CUSTOMER AND LOOK

15 AT VESSELS?

16 A. HE DID, YES, SIR.

17 Q. DID YOU WAIT ON HIM, OR ATTEND TO HIM ON THAT

18 VISIT?

19 A. I DID, YES, SIR.

20 Q. WHAT WAS HE LOOKING FOR?

21 A. HE WAS LOOKING FOR A CENTER CONSOLE POWERBOAT

22 THAT HE COULD TAKE FISHING. HE WAS LOOKING FOR A BOAT THAT

23 COULD HANDLE HEAVY WEATHER CONDITIONS.

24 Q. IS THAT WHAT HE TOLD YOU?

25 A. YES, SIR.

1 A. WE DID, YES, SIR.
2 Q. WHAT KIND OF VESSEL WAS THAT?
3 A. THAT IS A TRITON 2286, CENTER CONSOLE.
4 Q. HOW WAS IT POWERED?
5 A. WITH A YAMAHA, FOUR-STROKE, 225 ENGINE.
6 Q. SINGLE OUTBOARD?
7 A. YES, SIR.
8 Q. HOW WAS THE VESSEL EQUIPPED?
9 A. IN TERMS OF?
10 Q. DID THE VESSEL HAVE ANY ELECTRONICS ON IT AT
11 THAT TIME?
12 A. AT THIS POINT, IT WAS STRAIGHT FROM THE FACTORY
13 AND DID NOT HAVE ELECTRONICS, NO, SIR.
14 Q. NO ELECTRONICS, IT WAS JUST A TRITON 2286,
15 CENTER CONSOLE?
16 A. THAT'S CORRECT.
17 Q. DID IT HAVE ANY TYPE OF TOP?
18 A. IT HAD A T-TOP, YES, SIR.
19 Q. DID IT HAVE ANY KIND OF SEATING IN THE VESSEL?
20 A. YES, SIR.
21 Q. WHAT KIND OF SEATING?
22 A. IT HAD A LEAN POST WITH HANDRAILS.
23 Q. THAT WAS BEHIND THE CONSOLE?
24 A. YES, SIR.
25 Q. DID IT HAVE ANY SEATING FORWARD?

1 TO DEMONSTRATE THE VESSEL TO HIM ON A SEA TRIAL . . .

2 A. ASK YOUR QUESTION AGAIN, PLEASE?

3 Q. ON MARCH THE 20TH, DID YOU AND MISTER HINES
4 REACH AN AGREEMENT WHEREBY YOU WOULD TAKE THE VESSEL TO SOME
5 BODY OF WATER FOR THE PURPOSE OF YOU DEMONSTRATING THE VESSEL
6 TO HIM ON A SEA TRIAL?

7 A. YES, SIR.

8 Q. THAT AGREEMENT WAS REACHED WHEN?

9 A. ON MONDAY, THE DAY HE CAME TO THE BOAT STORE.

10 Q. MONDAY THE 20TH?

11 A. YES, SIR.

12 Q. WHAT DID YOU-ALL AGREE THAT YOU WOULD DO
13 REGARDING THE SEA TRIAL?

14 A. WE AGREED THAT WE WOULD TAKE THE BOAT TO
15 BEAUFORT. I UNDERSTOOD FROM THE CONVERSATION WITH HIM THAT
16 HE WAS A RESIDENT OF OLDE TOWNE YACHT CLUB, AND I OFFERED TO
17 PICK HIM UP AT HIS RESIDENCE AND BEGIN THE SEA TRIAL FROM HIS
18 DOCK.

19 Q. YOU WERE FAMILIAR WITH THE LOCATION OF OLDE
20 TOWNE?

21 A. VERY MUCH SO.

22 Q. DID YOU TAKE THE VESSEL THE NEXT DAY, MARCH 21?

23 A. YES, SIR.

24 Q. DO YOU KNOW WHAT TIME YOU LEFT NEW BERN WITH THE
25 VESSEL?

1 A. I KNOW THAT THE SEA TRIAL WAS SCHEDULED FOR 2:00
2 O'CLOCK, THE ACTUAL SEA TRIAL HAPPENED CLOSER TO 3:00.

3 Q. SO YOU-ALL HAD ACTUALLY REACHED AN AGREEMENT ON
4 WHAT TIME YOU WOULD TAKE THE VESSEL DOWN?

5 A. YES, SIR.

6 Q. SO YOU LEFT NEW BERN AT APPROXIMATELY WHAT TIME?

7 A. AROUND LUNCH TIME I LEFT NEW BERN, IT'S ROUGHLY
8 FORTY MILES.

9 Q. YOU TRAIERED THE VESSEL TO BEAUFORT?

10 A. THAT'S CORRECT.

11 Q. DID BOATS UNLIMITED HAVE A TRUCK THAT YOU USED
12 TO HAUL VESSELS AROUND?

13 A. YES, SIR.

14 Q. IS THAT WHAT YOU USED TO TAKE THE VESSEL TO
15 BEAUFORT?

16 A. YES, SIR.

17 Q. WHAT PREPARATIONS DID YOU MAKE, EITHER ON MARCH
18 20TH OR THE 21ST, FOR THE SEA TRIAL?

19 A. IN TERMS OF?

20 Q. ANYTHING THAT YOU DID TO PREPARE FOR THE SEA
21 TRIAL OF THE BOAT ON THE 21ST?

22 A. THE BOAT WAS EQUIPPED WITH PROPER COAST GUARD
23 EQUIPMENT WHICH INCLUDES LIFE JACKETS FOR EVERY PASSENGER ON
24 BOARD, A NOISE DEVICE, A FIRE EXTINGUISHER, AND A THROWABLE.

25 Q. WAS IT ALREADY EQUIPPED WITH THAT, OR DID YOU

1 Q. WAS ANYONE WITH YOU, OR DID YOU GO ALONE?
2 A. I WENT BY MYSELF.
3 Q. WHERE DID YOU GO TO LAUNCH THE VESSEL?
4 A. RADIO ISLAND MARINA IS WHERE I WENT, AND I
5 BELIEVE THOSE DOCKS ARE NO LONGER PRESENT AT THIS POINT.
6 Q. SO YOU LAUNCHED THE VESSEL AT RADIO ISLAND
7 MARINA?
8 A. THAT'S CORRECT.
9 Q. DID YOU HAVE ANY COMMUNICATION WITH MISTER HINES
10 ON THE 21ST, CALL HIM AND TELL HIM YOU WERE COMING, YOU WERE
11 GOING TO BE LATE, ANYTHING LIKE THAT?
12 A. I DON'T RECALL, BUT IT WOULD BE - I DON'T
13 RECALL.
14 Q. WHEN YOU LAUNCHED THE BOAT AT RADIO ISLAND
15 MARINA, WHAT DID YOU DO?
16 A. YOU MEAN THE SPECIFICS OF THE LAUNCHING PROCESS,
17 OR . . .
18 Q. AFTER YOU LAUNCHED IT, WHERE DID YOU GO?
19 A. I MOTORED THE BOAT TO HIS DOCK AT OLDE TOWNE
20 YACHT CLUB.
21 Q. TO THE BEST OF YOUR RECOLLECTION, THAT WAS THE
22 FIRST TIME THAT YOU HAD EVER OPERATED THAT VESSEL?
23 A. I CAN'T RECALL IF I HAD OPERATED IT BEFORE.
24 Q. WHEN YOU LEFT RADIO ISLAND MARINA, YOU WENT OUT
25 INTO THE - LEFT THE LITTLE CREEK THERE, GO OUT INTO THE

1 TURNING BASIN AREA IN MOREHEAD CITY?

2 A. THAT'S CORRECT.

3 Q. WHAT SPEED DID YOU TRAVEL FROM THERE TO OLDE
4 TOWNE MARINA?

5 A. IT'S A NO-WAKE ZONE, I WAS AT IDLE.

6 Q. YOU BASICALLY IDLED FROM RADIO ISLAND MARINA,
7 AROUND THE TIP OF RADIO ISLAND?

8 A. YES, SIR.

9 Q. UP BULKHEAD CHANNEL TO THE DOCKS AT OLDE TOWNE?

10 A. THAT'S CORRECT.

11 Q. AT ANYTIME ON MARCH 20TH OR THE 21ST, PRIOR TO
12 GOING OUT TO TAKE THE SEA TRIAL, DID YOU CHECK THE WEATHER?

13 A. I DID.

14 Q. HOW DID YOU CHECK THE WEATHER?

15 A. WEBSITE, NOAA.GOV.

16 Q. DO YOU RECALL WHAT THE WEATHER WAS?

17 A. YES, SIR.

18 Q. WHAT WAS THE WEATHER?

19 A. IT WAS FORECASTED 10 TO 15 KNOTS OUT OF THE
20 NORTHEAST.

21 Q. 10 TO 15 OUT OF THE NORTHEAST?

22 A. YES, SIR.

23 Q. WHEN YOU LAUNCHED THE VESSEL AT RADIO ISLAND
24 MARINA, WHAT DIRECTION WAS THE WIND BLOWING?

25 A. I DON'T RECALL NOTICING AT THAT POINT, BUT THE

1 FORECAST WAS CONSISTENT, IT DID NOT CHANGE THAT DAY.

2 Q. WHEN YOU MOTORED FROM RADIO ISLAND MARINA OVER
3 TO THE DOCKS AT OLDE TOWNE, HOW WAS THE WEATHER?

4 A. CONSISTENT, 10 TO 15 OUT OF THE NORTHEAST.

5 Q. DID YOU CHECK SEA CONDITIONS?

6 A. I DID.

7 Q. WHAT WERE THE SEA CONDITIONS?

8 A. 3 TO 4.

9 Q. 3 TO 4?

10 A. YES, SIR.

11 Q. WHERE WAS THAT?

12 A. 3 TO 4 FEET IN THE OCEAN WITH AN OUTGOING TIDE.

13 Q. MY NEXT QUESTION WAS, WHAT WERE THE TIDAL
14 CONDITIONS?

15 A. OUTGOING.

16 Q. OUTGOING?

17 A. IN THE SAME DIRECTION AS THE WIND.

18 Q. APPROXIMATELY WHAT TIME DID YOU ARRIVE AT THE
19 DOCKS AT OLDE TOWNE?

20 A. AT APPROXIMATELY 3:00 O'CLOCK.

21 Q. WAS MISTER HINES THERE WAITING ON THE DOCK FOR
22 YOU?

23 A. I DON'T RECALL IF HE WAS ON THE DOCK, OR MET ME
24 SHORTLY THEREAFTER.

25 Q. WAS ANYONE WITH HIM?

1 A. YES, SIR.

2 Q. WHO WAS WITH HIM?

3 A. NEIL WAGONER.

4 Q. DID YOU KNOW MISTER WAGONER BEFORE THAT DAY?

5 A. I KNEW HIM, HE HAD PURCHASED A BOAT FROM BOATS
6 UNLIMITED PREVIOUSLY.

7 Q. DID YOU SELL HIM THE BOAT, OR DID CHRIS POPE?

8 A. CHRIS POPE SOLD HIM THE BOAT.

9 Q. HOW MUCH PREVIOUS TO THIS INCIDENT?

10 A. I DON'T RECALL THE DETAILS.

11 Q. BUT YOU KNEW HIM THROUGH THAT BOAT PURCHASE?

12 A. YES, SIR.

13 Q. WAS IT WITHIN A YEAR OF MARCH 21, 2006, THAT
14 MISTER WAGONER PURCHASED THE BOAT?

15 A. I DON'T KNOW THE SPECIFIC DATE OF PURCHASE.

16 Q. DO YOU KNOW WHAT KIND OF BOAT HE PURCHASED?

17 A. I DO.

18 Q. WHAT WAS THAT?

19 A. A TRITON L.T.S., 22 FOOTER.

20 Q. IS IT SIMILAR TO THIS PARTICULAR BOAT?

21 A. IT IS NOT, L.T.S. STANDS FOR LIGHT TACKLE
22 SERIES, IT'S COMMONLY CALLED A BAY BOAT, WHICH IS A LIGHTER,
23 SOFTER DEAD RISE.

24 Q. FLATTER BOTTOM?

25 A. FLATTER BOTTOM.

1 APPROXIMATELY WHAT TIME WAS IT?

2 A. HE SPENT APPROXIMATELY TWENTY MINUTES IN THE
3 BOAT, TALKING, AND LOOKING AT THE COMPARTMENTS, AND THE
4 LAYOUT OF THE BOAT BEFORE WE LEFT THE DOCK.

5 Q. WHEN YOU LEFT THE DOCK, WHO WAS OPERATING THE
6 BOAT?

7 A. I WAS.

8 Q. TELL US WHAT ROUTE YOU TOOK?

9 A. I TRAVELED SOUTH THROUGH THE BEAUFORT HARBOR
10 CHANNEL, TOWARD 1BH AT THE HEAD OF THE BEAUFORT CHANNEL, AND
11 PROCEEDED TOWARD THE INLET.

12 Q. SO YOU LEFT OLDE TOWNE MARINA, AND PROCEEDED
13 THROUGH BULKHEAD CHANNEL OUT TO THE SHIPPING CHANNEL FOR THE
14 MOREHEAD PORT THERE AT THE SOUTHERN TERMINUS OF RADIO ISLAND?

15 A. CORRECT.

16 Q. ONCE YOU REACHED THE SHIPPING CHANNEL, WHAT DID
17 YOU DO?

18 A. BEFORE I REACHED THE SHIPPING CHANNEL, I HAD
19 GIVEN THE HELM TO DOCTOR HINES.

20 Q. DO YOU RECALL AT WHAT POINT DOCTOR HINES TOOK
21 OVER THE HELM?

22 A. WE WERE STILL IN THE NO-WAKE ZONE LEAVING
23 BEAUFORT HARBOR, I BELIEVE THE NO-WAKE ZONE IS CLOSE TO
24 THERE.

25 Q. IT WAS BEFORE YOU REACHED THE NAVY RAMP AT THE

1 END OF RADIO ISLAND?

2 A. YES.

3 Q. SO SHORTLY AFTER DEPARTING THE DOCK, YOU GAVE
4 THE HELM OVER TO BEN HINES?

5 A. THAT'S CORRECT.

6 Q. THEN HE OPERATED THE VESSEL OUT OF BULKHEAD
7 CHANNEL INTO THE MOREHEAD CITY SHIPPING CHANNEL?

8 A. THAT'S CORRECT.

9 Q. AND THEN WHAT DIRECTION DID HE PROCEED?

10 A. WE PROCEEDED THROUGH THE INLET, WHICH WOULD BE A
11 SOUTHEASTERLY DIRECTION.

12 Q. DID YOU GO TO THE INLET, OR DID YOU PROCEED WITH
13 THE SHIPPING CHANNEL, AND THEN MAKE A TURN TOWARD THE EAST
14 AND GO OVER BEHIND SHACKLEFORD BANKS?

15 A. THE SECOND. WE PROCEEDED THROUGH THE SHIPPING
16 CHANNEL, AND THEN MADE OUR WAY FOR THE RANGE MARK AT
17 SHACKLEFORD BANKS.

18 Q. WHAT SPEED DID DOCTOR HINES OPERATE THE VESSEL
19 ONCE HE REACHED THE SHIPPING CHANNEL?

20 A. I DON'T RECALL SPECIFIC SPEED, I DO KNOW THAT
21 ONCE WE WERE BEHIND SHACKLEFORD, WE WERE CERTAINLY ON PLANE.

22 Q. DID YOU PLANE BEFORE YOU REACHED SHACKLEFORD, OR
23 DO YOU RECALL?

24 A. I DON'T RECALL.

25 Q. BUT ONCE YOU GOT BEHIND SHACKLEFORD, BEN HINES

1 PUT THE BOAT UP ON A PLANE, AND OPERATED THE BOAT?

2 A. THAT'S CORRECT.

3 Q. IN WHAT AREA BEHIND SHACKLEFORD DID BEN HINES
4 OPERATE THE VESSEL?

5 A. THERE'S A RED NUN ABOUT A MILE EAST OF THE RANGE
6 MARK, BETWEEN THE RED NUN AND THE RANGE MARKER.

7 Q. THE RED NUN IS THERE AT THE BREAKWATER TO THE
8 JETTY?

9 A. THERE'S A JETTY THERE, YES, SIR.

10 Q. SO HE OPERATED IT UP TO ABOUT THE JETTY, AND
11 THEN WHAT HAPPENED?

12 A. DOCTOR HINES HAD THE HELM, AND WANTED TO DRIVE
13 THE BOAT TO GET A FEEL FOR HOW IT WOULD HANDLE. HE WANTED TO
14 SEE HOW IT WOULD TRACK AND TAKE A TURN, SO ON PLANE, HE ASKED
15 IF IT WOULD BE APPROPRIATE, OR OKAY, TO TURN THE BOAT LEFT
16 AND RIGHT, WHICH HE DID.

17 Q. DID HE EVER TURN THE BOAT AROUND AND HEAD BACK
18 TOWARD MOREHEAD CITY?

19 A. HE DID.

20 Q. HOW LONG DID HE OPERATE THE VESSEL?

21 A. I'D SAY HE WAS OPERATING THE VESSEL
22 APPROXIMATELY TEN TO FIFTEEN MINUTES.

23 Q. WHERE WAS THE LOCATION OF THE PERSONS ON BOARD
24 WHEN BEN HINES WAS OPERATING THE VESSEL?

25 A. BEN HINES, OF COURSE, IS AT THE HELM, I DON'T

1 RECALL WHERE I WAS, OR MISTER WAGONER.

2 Q. YOU JUST RECALL BEN HINES BEING AT THE HELM?

3 A. THAT'S CORRECT.

4 Q. THE HELM WOULD BE LOCATED BEHIND THE CENTER

5 CONSOLE?

6 A. BEHIND THE CENTER CONSOLE ON THE LEFT SIDE.

7 Q. THE LEFT SIDE?

8 A. YES, SIR.

9 Q. DID THERE COME A POINT IN TIME WHEN YOU TOOK

10 OVER THE OPERATION OF THE VESSEL?

11 A. YES, SIR.

12 Q. WHEN WAS THAT?

13 A. AFTER MISTER - DOCTOR HINES ASKED ME TO.

14 Q. WHERE WAS THE VESSEL AT THAT POINT?

15 A. BETWEEN THE RED NUN AND THE RANGE MARKER.

16 Q. THE RANGE MARKER, YOU'RE REFERRING TO THE MARKER

17 ON THE POINT OF SHACKLEFORD?

18 A. YES, SIR, THE TRIPLE DOLPHIN PILING JUST OFF THE

19 TIP OF SHACKLEFORD.

20 Q. WHY DID YOU TAKE OVER OPERATION OF THE VESSEL

21 THEN?

22 A. DOCTOR HINES ASKED ME TO.

23 Q. FOR ANY PARTICULAR REASON?

24 A. HE HAD INDICATED THAT HE WANTED TO SEE HOW THE

25 BOAT WOULD HANDLE, AND HE WANTED TO SEE WHAT IT WOULD DO, SO

1 HE ASKED ME TO TAKE THE VESSEL AT THAT TIME.

2 Q. WAS THAT THE REASON HE ASKED YOU TO TAKE IT
3 OVER, OR WAS IT BECAUSE HE FELT LIKE THE VESSEL WAS NOT
4 HANDLING PROPERLY?

5 A. AT NO POINT DID I PERCEIVE THAT THE VESSEL WAS
6 HANDLING IMPROPERLY.

7 Q. DID BEN HINES PERCEIVE THAT IT WASN'T HANDLING
8 PROPERLY?

9 A. I DON'T KNOW THAT HE DID.

10 Q. BUT HE ASKED YOU TO TAKE OVER THE OPERATION OF
11 THE VESSEL?

12 A. HE DID.

13 Q. DID YOU DO SO?

14 A. YES, SIR.

15 Q. WHEN YOU TOOK OVER THE OPERATION OF THE VESSEL,
16 YOU GOT BEHIND THE HELM?

17 A. YES, SIR.

18 Q. WHERE WAS BEN HINES?

19 A. BEN HINES WAS TO MY LEFT, ON THE PORT SIDE OF
20 THE BOAT.

21 Q. IS THERE ANY SEATING THERE?

22 A. NO, SIR.

23 Q. WAS HE STANDING?

24 A. HE WAS STANDING.

25 Q. WAS HE HOLDING ONTO ANYTHING?

1 A. YES, SIR.

2 Q. WHAT WAS HE HOLDING ONTO?

3 A. THE PIPES OF THE T-TOP.

4 Q. WHICH PIPES OF THE T-TOP?

5 A. MY RECOLLECTION IS ONE HAND ON THE VERTICAL

6 PIPE, AND ONE HAND ON THE HORIZONTAL PIPE ABOVE.

7 Q. DO YOU RECALL WHICH HAND WAS WHERE?

8 A. NO, SIR.

9 Q. WHERE WAS THE OTHER PASSENGER, MISTER WAGONER?

10 A. MISTER WAGONER WAS BEHIND THE LEAN POST, BEHIND

11 ME, HOLDING ONTO THE GRAB RAIL.

12 Q. ONCE YOU TOOK OVER THE OPERATION OF THE VESSEL,

13 TELL ME WHAT YOU DID?

14 A. WE MOTORED OFF PLANE, OR NOT ON PLANE, TOWARD

15 THE RANGE MARKER, TOWARD THE INLET IN A WESTERLY DIRECTION,

16 AND UPON REACHING THE ENTRANCE TO THE INLET, TURNED SOUTH AND

17 HEADED TOWARD THE DEMARCATION LINE.

18 Q. WHAT SPEED WERE YOU OPERATING?

19 A. IN BETWEEN 10 AND 15 MILES AN HOUR.

20 Q. WAS THE VESSEL ON PLANE?

21 A. NO, SIR.

22 Q. YOU MADE YOUR TURN IN THE VICINITY OF WHAT YOU

23 REFERRED TO AS A RANGE MARKER ON THE WESTERN POINT OF

24 SHACKLEFORD BANKS?

25 A. I WOULD SAY THAT WE WERE ONE-THIRD THE DISTANCE

1 BETWEEN THE RANGE MARKER AND FORT MACON.

2 Q. THEN YOU MADE A TURN TO THE PORT?

3 A. TO PORT, IN A SOUTHERLY DIRECTION, YES, SIR.

4 Q. WHAT DID YOU DO THEN?

5 A. WE MOTORED FORWARD.

6 Q. WHAT HAPPENED?

7 A. WE CONTINUED FORWARD FOR A FEW HUNDRED - I'D SAY
8 100 YARDS, WE WENT - THE SPEED WE WERE TRAVELING WAS AT AN
9 EFFORT TO MAINTAIN A SAFE SPEED. THERE WERE A SET OF WAVES
10 THAT I HAD TO NEGOTIATE, OUR SAFE SPEED WAS DESIGNED TO TAKE
11 A WAVE TO THE CREST AND THEN DOWN TO THE TROUGH. WE WENT UP
12 AND DOWN THE FIRST WAVE, UP AND DOWN THE SECOND WAVE, THE
13 PERIOD OF THE THIRD WAVE WAS SHORTER, AND THE V-HULL OF THE
14 BOAT PENETRATED THAT THIRD WAVE AND WE FELT A JOLT, AT WHICH
15 POINT I LOOKED OVER AND SAW THAT DOCTOR HINES WAS ON THE
16 FLOOR OF THE BOAT.

17 Q. DID YOU SEE DOCTOR HINES BEING THROWN IN THE
18 AIR, OR HAVE THE PERCEPTION OF BEING THROWN IN THE AIR WHEN
19 YOU NEGOTIATED THE THIRD WAVE?

20 A. NO, SIR.

21 Q. SO ALL YOU SAW WAS DOCTOR HINES ON THE FLOOR?

22 A. THAT'S CORRECT.

23 Q. YOU FELT A JOLT FROM NEGOTIATING A WAVE?

24 A. YES, SIR.

25 Q. CAN YOU DESCRIBE DOCTOR HINES'S PHYSICAL

1 GENERAL AREA THAT YOU TOOK OVER, AND THEN I WANT YOU TO SHOW
2 US THE COURSE THAT YOU TOOK FROM THE TIME YOU TOOK OVER UNTIL
3 THE INCIDENT OCCURRED WHEN DOCTOR HINES IS THROWN DOWN IN THE
4 BOTTOM OF THE VESSEL.

5 MR. PION: NOTE AN OBJECTION TO THE FORM OF THE
6 QUESTION. YOU CAN GO AHEAD AND ANSWER, YOU CAN GO AHEAD AND
7 DRAW THE LINE.

8 A. I MEAN, MAY I SUGGEST A SMALLER CIRCLE
9 INDICATING THE GENERAL LOCATION?

10 Q. THAT'S FINE.

11 A. AND THEN A SOLID LINE TO THE AREA OF THE
12 INCIDENT?

13 Q. WHICHEVER WAY YOU CAN BEST ILLUSTRATE IT.

14 A. OKAY - (INDICATING ON EXHIBIT.)

15 Q. IS THAT - IS WHERE YOU TERMINATED YOUR LINE
16 WHERE YOU CONTEND THE INCIDENT OCCURRED?

17 A, YES, SIR.

18 Q. PLACE AN "X" THERE, PLEASE.

19 A. (INDICATING ON EXHIBIT.)

20 Q. I BELIEVE YOU HAD TESTIFIED EARLIER THAT THE
21 FORECASTED WAVE CONDITIONS WERE 3 TO 4 FEET?

22 A. YES, SIR.

23 Q. AND DID YOU OBSERVE WAVES IN THE BEAUFORT INLET
24 OF THAT MAGNITUDE?

25 A. YES, SIR.

1 Q. WHAT DIRECTIONS WERE THE WAVES COMING FROM?

2 A. I DON'T KNOW THE DIRECTION OF THE WAVES. I DO
3 KNOW THE FORECAST WAS NORTHEAST AND AN OUTGOING TIDE, SO WE
4 WERE DOWN WIND AND DOWN SEA.

5 Q. YOU SAW WAVES IN THE BEAUFORT INLET, DID YOU
6 NOT?

7 A. THAT'S CORRECT.

8 Q. WERE THOSE WAVES COMING TOWARDS LAND, OR WERE
9 THEY GOING AWAY FROM LAND?

10 A. I DON'T RECALL.

11 Q. LET ME ASK YOU THIS, WERE THE WAVES
12 IN THE BEAUFORT INLET AREA GOING FROM THIS
13 DIRECTION - (INDICATING) - OR WERE THEY COMING FROM THIS
14 DIRECTION - (INDICATING)?

15 A. I SAW A SET OF THREE WAVES, OFTEN THERE IS NOT A
16 STEADY PATTERN OF WAVE DIRECTION IN AN INLET, BECAUSE THE
17 WIND DIRECTION WAS NORTHEAST AND THE TIDE WAS OUTGOING, I
18 KNOW THAT THEY WERE CALMER THAN THEY NORMALLY ARE.

19 Q. THE WAVES WERE COMING AT YOU AS YOU WERE
20 TRAVELING OUT, WERE THEY NOT?

21 A. I DON'T RECALL.

22 Q. WERE THE WAVES GOING AWAY FROM YOU?

23 A. I DON'T RECALL.

24 Q. BUT YOU HAVE NO RECOLLECTION OF WHAT DIRECTION
25 THE WAVES THAT YOU ENCOUNTERED IN BEAUFORT INLET WERE

1 TRAVELING?

2 A. NO, SIR.

3 Q. YOU DON'T KNOW IF THOSE WAVES WERE COMING
4 TOWARDS YOU, OR IF THEY WERE GOING AWAY FROM YOU?

5 A. NO, SIR.

6 Q. WERE THEY AT A RIGHT OBLIQUE . . .

7 MR. PION: MAY HE SIT DOWN NOW?

8 MR. WEEKS: YES.

9 Q. WERE THOSE WAVES AT A RIGHT OBLIQUE ANGLE TO
10 YOUR VESSEL, A LEFT OBLIQUE ANGLE TO YOUR VESSEL, OR DO YOU
11 KNOW?

12 A. THE WAVES WERE PERPENDICULAR TO THE VESSEL.

13 Q. PERPENDICULAR. WHICH DIRECTION WAS THE VESSEL
14 HEADING?

15 A. IN A SOUTHERLY DIRECTION.

16 Q. WAS IT HEADING TRUE SOUTH, OR WAS IT HEADING
17 SOUTHWEST, DID THE VESSEL HAVE A COMPASS?

18 A. I DON'T RECALL.

19 Q. YOU KNOW THE WAVES WERE PERPENDICULAR TO THE
20 VESSEL, BUT YOU DON'T KNOW IF THEY WERE COMING TOWARDS YOU OR
21 GOING AWAY FROM YOU?

22 A. NO, SIR.

23 Q. WHAT WAS YOUR ESTIMATE OF THE WIND SPEEDS AT THE
24 TIME OF THE INCIDENT?

25 A. 10 TO 15 KNOTS.

1 Q. DO YOU KNOW WHICH HAND WAS ON THE VERTICAL?

2 A. NO, SIR.

3 Q. DO YOU KNOW WHICH HAND WAS ON THE HORIZONTAL?

4 A. NO, SIR.

5 Q. WHICH WAY WAS BEN HINES FACING WHEN THE WAVES
6 WERE ENCOUNTERED, IF YOU KNOW?

7 A. FORWARD.

8 Q. DID YOU VERBALIZE ANY TYPE OF WARNING TO THE
9 PASSENGERS ON YOUR VESSEL WHEN YOU ENCOUNTERED THESE THREE
10 WAVES?

11 A. NO, SIR.

12 Q. WERE THESE WAVES LARGER THAN THE OTHER WAVES IN
13 THE INLET, OR WERE THEY BASICALLY THE SAME SIZE, GENERALLY?

14 A. I DESCRIBED THEM AS THE SAME SIZE AND VERY
15 TYPICAL.

16 Q. YOU DESCRIBED IT AS A SET OF THREE WAVES?

17 A. YES, SIR.

18 Q. YOU NEGOTIATED THE FIRST TWO WAVES BEFORE BEN
19 HINES WAS THROWN DOWN WHEN THE VESSEL ENCOUNTERED THE THIRD
20 WAVE?

21 MR. PION: NOTE AN OBJECTION TO THE FORM OF THE
22 QUESTION. YOU CAN ANSWER.

23 A. WILL YOU REPEAT THE QUESTION, PLEASE?

24 Q. YOU HAD NEGOTIATED THE FIRST TWO WAVES OF THE
25 SET OF THREE BEFORE YOU ENCOUNTERED THE THIRD WAVE WHICH